



TEXAS INDIGENT DEFENSE COMMISSION

Fiscal Monitoring Report

Gray County, Texas

FY 2014 Indigent Defense Expenses

Final Report

January 22, 2016

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EXECUTIVE SUMMARY

Gray County's on-site fiscal monitoring visit was conducted August 6-7, 2015. The fiscal monitor reviewed financial records to determine whether grant funds were spent in accordance with the terms and conditions of the Texas Indigent Defense Commission grants.

The expenditure period of October 1, 2013 to September 30, 2014 (FY2014) was reviewed during the fiscal monitoring visit.

Summary of Findings

- Attorney CLE hours are not maintained to verify attorney qualifications.
- Attorney Fee Vouchers did not include the amount requested by the attorney or the itemization that is needed to comply with Article 26.05(c), Code of Criminal Procedure
- Written explanations from judges for variance in amounts approved and amounts requested on attorney fee vouchers were not present on two vouchers as required by Article 26.05(c) of the Texas Code of Criminal Procedures.
- Some payments to attorneys do not appear to be made in accordance with the published fee schedule as required by Code of Criminal Procedure Article 26.05.
- Two errors with regards to reporting categories were detected within the county's FY2014 Indigent Defense Expenditure Report (IDER).

Objective

The objectives of this review were to:

- determine whether grant funds were used for authorized purposes in compliance with laws, regulations, and the provisions of the grant;
- validate policies and procedures relating to indigent defense services;
- provide recommendations pertaining to operational efficiency; and
- assist with any questions or concerns on the indigent defense program requirements.

Scope

The county's indigent defense expenditures were monitored to ensure compliance with applicable laws, regulations, and the provisions of the grants during FY2014. Records provided by the Gray County Auditor's Office as well as records from the office of the District Court Administrator, were reviewed.

Methodology

To accomplish the objectives, the fiscal monitor met with the assistant county auditor and staff members, the administrative county judge, and the administrative district judge as well as the juvenile judge. The fiscal monitor reviewed:

- random samples of paid attorney fees for verification;
- accounts payable ledger transactions provided by the Gray County Auditor's Office;
- IDER and attorney fee schedule;
- public attorney appointment list, attorney applications, attorney criminal and juvenile continuing legal education training documentation, any applicable contracts; and
- the county's local indigent defense plan.

DETAILED REPORT

BACKGROUND INFORMATION

County Background

Gray County comprises the Pampa, TX Micropolitan Statistical Area. The County serves an estimated population of 23,210. The County is a political subdivision of the State of Texas. The County occupies an area of 929 square miles, of which 3.4 square miles is water. The County borders Roberts, Wheeler, Donley, Carson, Hemphill, Hutchinson and Collingsworth Counties.

Commission Background

In January 2002, the 77th Texas Legislature established the Texas Task Force on Indigent Defense. In May 2011, the 82nd Texas Legislature changed the name of the Texas Task Force on Indigent Defense to the Texas Indigent Defense Commission (Commission) effective September 1, 2011. The Commission remains a permanent standing committee of the Texas Judicial Council, and is administratively attached to the Office of Court Administration (OCA).

The Commission provides financial and technical support to counties to develop and maintain quality, cost-effective indigent defense systems that meet the needs of local communities and the requirements of the constitution and state law.

The purpose of the Commission is to promote justice and fairness to all indigent persons accused of criminal conduct, including juvenile respondents, as provided by the laws and constitutions of the United States and the State of Texas. The Commission conducts these reviews based on the directive in Section 79.037(c) Texas Government Code, to “monitor each county that receives a grant and enforce compliance by the county with the conditions of the grant...”, as well as Section 173.401(a), Texas Administrative Code, which provides that “the Commission or its designees will monitor the activities of grantees as necessary to ensure that grant funds are used for authorized purposes in compliance with laws, regulations, and the provisions of the grant.”

Formula Grant

The County submitted the FY 2014 indigent defense on-line grant application to assist in the provision of indigent defense services. Gray County met the formula grant eligibility requirements and was awarded \$49,692.00 for FY 2014.

Discretionary Grant

Gray County did not apply for a discretionary grant for FY 2014; therefore grant funds were not available to review.

DETAILED FINDINGS AND RECOMMENDATIONS

Finding One

Title 1, Texas Administrative Code (TAC) rule §174.1 provides that “an attorney who is otherwise eligible for appointment under Article 26.04, CCP may be appointed under this rule only if the attorney completes a minimum of six hours of continuing legal education (CLE) pertaining to criminal law during each 12-month reporting period.” Additionally, for appointment in juvenile cases, TAC rule §174.2 states that “an attorney may be appointed under this rule only if an attorney completes a minimum of six hours of continuing legal education pertaining to juvenile law during each 12-month reporting period.” Alternatively, the rule provides an attorney is eligible if the attorney is board certified in criminal law or juvenile law, respectively.

The County could not document that attorney’s assigned criminal cases had met the CLE requirements to be eligible for appointment. The county may have made ineligible payments to these attorneys. (TAC rule §174.4 does allow for emergency appointment when no attorney meeting the CLE requirements is available)

Recommendation:

The county must implement a procedure to verify that all attorneys included on the current appointment list have met the current year’s CLE requirements.

County Response:

Noted

Gray County Action Plan

Implement a procedure requiring attorneys to submit verification of CLE requirements

to verify attorneys have met CLE requirements.

Contact person(s): 223rd District Judge Phil Vanderpool

Completion date: End of State’s 2015-2016 fiscal year

Finding Two

Code of Criminal Procedure (CCP) Article 26.05(c) reads in part “no payment shall be made under this article until the form for itemizing the services performed is submitted to the judge presiding over the proceedings” and “if the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount.”

Sixty eight (68) attorney fee vouchers for FY 2014 were reviewed. Twenty of the vouchers had no itemization and/or request for an amount to be paid. These twenty attorney fee vouchers did not meet the statutory requirements of CCP Article 26.05(c).

Recommendation:

The Judges should require all the attorneys to complete the voucher with the requested amount and itemization of services performed.

County Response:

Noted

Gray County Action Plan

Require all attorneys to complete voucher with requested amount and itemization before authorizing payment.

Contact person(s): 223rd District Judge Phil Vanderpool

Completion date: As submitted

Finding Three

The Code of Criminal Procedure (CCP) Article 26.05(c) goes on to reads ... and “if the judge or director disapproves the requested amount of payment, the judge or director shall make written findings stating the amount of payment that the judge or director approves and each reason for approving an amount different from the requested amount.

Two vouchers, one from the 223rd District Court and one from the County Court, had a variance in amount approved by the court from the amount requested by the attorney without an explanation. It was noted that the judges were documenting voucher for an increase due to travel

but on the two vouchers in question the judge changed the amount requested to comply with the fee schedule. One voucher increased the amount to include two dismissed cases and the second voucher reduced the amount to pay the stated misdemeanor plea amount. However, without an explanation from the judge for the variance on the fee vouchers the statutory requirements of CCP Article 26.05(c) was not met.

Recommendation:

Judges must document the reason(s) for approving an amount other than the amount requested by the attorney.

County Response:

Noted

Gray County Action Plan

Document reason(s) for approving an amount other than amount requested.

Contact person(s): Judge Phil Vanderpool, 223rd District Judge

Completion date: As submitted

Finding Four

Four payments out of the sixty eight attorney fee vouchers reviewed do not appear to be made in accordance with the published fee schedule as required by Code of Criminal Procedure (CCP) Article 26.05.

Two attorney fee vouchers reviewed were regarding detention hearings on juvenile cases. The amount paid does not appear on the published fee schedule listed in the countywide procedures adopted by the judges. One invoice for two felony cases that were dismissed paid \$150.00 for each case when the fee schedule indicates that \$250.00 per dismissed case would be paid. An additional Juvenile case which was dismissed was paid \$300.00 when the schedule indicates that \$250.00 would have been the fee. The payment amounts on these two vouchers were not requested by the attorney. It could be that these were oversight errors that could have been prevented if the attorneys' had requested the correct amounts.

Recommendation:

The payment amounts approved and authorized for the detention hearing were not supported by the current published fee schedule. The judges should review the fee schedule and take formal action, if necessary, to adopt a new fee schedule that outlines its current payment practices in accordance with the requirements of CCP Article 26.05(c).

County Response:

Noted

Gray County Action Plan

Judges review fee schedule and if necessary adopt a new fee schedule.

Contact person(s): 223rd District Judge Phil Vanderpool

Completion date: At next Judges meeting.

Finding Five

The Indigent Defense Expenditure Report (IDER) required under Texas Government Code §79.036(e) requires counties to report the amount expended for indigent defense in each court and in each case in which appointed counsel are paid. The passage of House Bill 1318 of the 83rd Legislature amends the Texas Government Code §79.036 to require counties to further provide this information in detail by attorney.

Two errors were noted on the County's FY 2014 IDER, the first one is that all of the county courts misdemeanor case expenses totaling \$46,615.00 were included as adult felony expenses. Therefore it appears that \$0.00 was spent on misdemeanor cases. The second error is in regards to expert witness expenditures. It appears that the county paid expert witness expenditures on a felony murder trial however these expenditure was not captured under the expert witness category, these costs were included with other direct litigation expenses. The total indigent defense expenditure is not affected, but the classification of the expenditures is not properly reported.

Recommendation:

The county must report case counts and expenditures for each court. The county should consider implementing procedures both to identify Expert Witness and Investigative expenses separately from Other Direct Litigation expenses to assist in the IDER preparation and a review of the IDER before submission.

County Response:

Noted

Gray County Action Plan

Implement procedures to identify Expert Witness and Investigative expenses separately.

Contact person(s): 223rd District Judge Phil Vanderpool

Completion date: Immediately

APPENDIXES

APPENDIX A – INDIGENT DEFENSE EXPENDITURE REPORT

GRAY COUNTY INDIGENT DEFENSE EXPENDITURES			
Expenditures	2012	2013	2014
Population Estimate	22,855	22,987	23,210
Juvenile Assigned Counsel	\$9,746.00	\$9,975.00	\$7,712.50
Capital Murder	\$0.00	\$0.00	\$0.00
Adult Non-Capital Felony Assigned Counsel	\$284,581.35	\$250,735.17	\$226,532.50
Adult Misdemeanor Assigned Counsel	\$37,600.00	\$48,900.00	\$0.00
Juvenile Appeals	\$0.00	\$0.00	\$0.00
Adult Felony Appeals	\$0.00	\$0.00	\$0.00
Adult Misdemeanor Appeals	\$0.00	\$0.00	\$0.00
Licensed Investigation	\$0.00	\$0.00	\$0.00
Expert Witness	\$0.00	\$0.00	\$0.00
Other Direct Litigation	\$0.00	\$3,456.63	\$23,896.58
Total Court Expenditures	\$331,927.35	\$313,066.80	\$258,141.58
Administrative Expenditures	\$0.00	\$0.00	\$0.00
Funds Paid by Participating County to Regional Program	\$21,776.00	\$21,776.00	\$21,776.00
Total Court and Administrative Expenditures	\$353,703.35	\$334,842.80	\$279,917.58
Formula Grant Disbursement	\$15,092.00	\$30,721.00	\$49,692.00
Equalization Disbursement	\$27,331.00	\$0.00	\$0.00
Discretionary Disbursement	\$0.00	\$0.00	\$0.00
Reimbursement of Attorney Fees	\$42,899.27	\$35,652.89	\$31,052.42
Reimbursement by State Comptroller for Writs of Habeas Corpus	\$0.00	\$0.00	\$0.00
Total Assigned Counsel Cases	455	680	521

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

Gray County				
Year	2012	2013	2014	Texas 2014
Population (Non-Census years are estimates)	22,855	22,987	23,210	26,642,612
Felony Charges Added (from OCA report)	377	342	450	270,401
Felony Cases Paid	297	460	320	192,735
% Felony Charges Defended with Appointed Counsel	78.78%	134.50%	71.11%	71.28%
Felony Trial Court-Attorney Fees	\$284,581.35	\$250,735.17	\$226,532.50	\$104,577,627.50
Total Felony Court Expenditures	\$284,581.35	\$254,191.80	\$250,429.08	\$121,013,238.56
Misdemeanor Charges Added (from OCA report)	594	565	567	530,335
Misdemeanor Cases Paid	128	190	180	223,045
% Misdemeanor Charges Defended with Appointed Counsel	21.55%	33.63%	31.75%	42.06%
Misdemeanor Trial Court Attorney Fees	\$37,600.00	\$48,900.00	\$0.00	\$38,286,859.48
Total Misdemeanor Court Expenditures	\$37,600.00	\$48,900.00	\$0.00	\$39,406,492.35
Juvenile Charges Added (from OCA report)	31	29	24	31,996
Juvenile Cases Paid	30	30	21	45,340
Juvenile Attorney Fees	\$9,746.00	\$9,975.00	\$7,712.50	\$10,901,190.88
Total Juvenile Expenditures	\$9,746.00	\$9,975.00	\$7,712.50	\$11,597,789.07
Total Attorney Fees	\$331,927.35	\$309,610.17	\$234,245.00	\$159,310,349.08
Total ID Expenditures	\$353,703.35	\$334,842.80	\$279,917.58	\$229,943,368.55
Increase In Total Expenditures over Baseline	295.75%	274.65%	213.19%	159.20%
Total ID Expenditures per Population	\$15.48	\$14.57	\$12.06	\$8.63
Commission Formula Grant Disbursement	\$15,092.00	\$30,721.00	\$49,692.00	\$36,739,158.25
Commission Equalization Grant Award	\$27,331.00			

Indigent Defense Expenditure Reporting

Source: Texas Indigent Defense Commission records

APPENDIX B – CRITERIA

Criteria

- Uniform Grant Management Standards
- Texas Government Code, Section 79.036. Indigent Defense Information
- Texas Government Code, Section 79.037. Technical Support; Grants
- Code of Criminal Procedures Art 26.04 Procedures for Appointing Counsel
- Code of Criminal Procedures Art 26.05 Compensation of Counsel Appointed to Defend
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.1
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter A Rule 174.2
- Texas Administrative Code - Title 1, Part 8, Chapter 174 Subchapter B Definitions
- FY2014 Indigent Defense Expenditure Report Manual found at:
<http://www.tidc.texas.gov/media/25884/FY2014IDERManualFinalRevised0912.pdf>

APPENDIX C – DISTRIBUTION LIST

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